

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE:

AXA EQUITABLE LIFE INSURANCE COMPANY
COI LITIGATION

This Document Relates to All Actions

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16-CV-740 (JMF)

ORDER

JESSE M. FURMAN, United States District Judge:

The Court has reviewed the parties' submissions with respect to class notices and proposed order. *See* ECF Nos. 413-14, 418-19, 429-31. The Court rules on the parties' remaining disputes as follows:

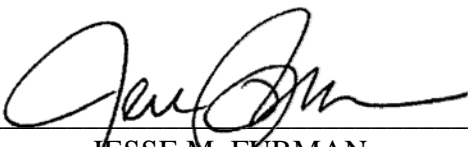
- The Court denies AXA's request to stay class notice pending resolution of its Rule 23(f) petition, substantially for the reasons set forth in Class Plaintiffs' letter of September 11, 2020, *see* ECF No. 430, at 2-3.
- The opt-out period shall be 90 days, substantially for the reasons set forth in AXA's letter of September 3, 2020, *see* ECF No. 418, at 3-4.
- AXA shall file its motions for summary judgment on the date the opt-in period ends. All other dates and deadlines set forth in the Court's Order of January 29, 2020, *see* ECF No. 396, remain in effect.
- In light of *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173-77 (1974), *In re Franklin Nat'l Bank Sec. Litig.*, 574 F.2d 662, 669-71 (2d Cir. 1978), and their progeny, the Court is compelled to agree with AXA that Class Plaintiffs' proposed notice plan is inadequate and that Class Plaintiffs must use all available and reasonable efforts (including subpoenaing Registered Owners) to identify the names and addresses of all ascertainable members of the Class, including the Non-Registered Owners. *See* ECF No. 418, at 2-3.
- With respect to whether owners of policies must opt out or not as to all policies, even where they are held on behalf of different principals, the Court agrees with Class Plaintiffs' alternative suggestion to include a sentence stating: "For the avoidance of doubt, if a nominal owner (such as a securities intermediary or trustee) owns multiple class policies on behalf of different principals, that nominal owner may stay in or opt out of the classes separately for each principal." *See* ECF No. 430, at 5.

The Court will hold a telephone conference on **September 22, 2020**, at **10:15 a.m.**, to address how to proceed in light of the decision above with respect to Class Plaintiffs' notice plan. Counsel should be prepared to address not only the procedures and schedule for any notice-related discovery, but also whether the Court — in lieu of, or in addition to, such discovery — should entertain briefing on the question of whether the certified classes should be modified to include only registered owners of an AUL II policy. *See* August 13, 2020 Opinion and Order, ECF No. 403, at 17-18 (noting that the Court was “inclined to think that AXA has the better of the argument,” but “refrain[ing] from” deciding the issue because, among other things, it had “not been fully briefed”). Counsel shall confer by telephone about these issues in advance of the conference. To access the September 22nd conference, counsel should call 888-363-4749 and use access code 5421540#. Members of the public and press may attend using the same dial-in information; they will be placed in listen-only mode. The parties are reminded to follow the procedures for teleconferences described in the Court's Emergency Individual Rules and Practices in Light of COVID-19, which are available at <https://nysd.uscourts.gov/hon-jesse-m-furman>. Among other things, those procedures require counsel to provide advance notice of who will participate in the conference and the telephone numbers they will use to participate.

The Clerk of Court is directed to docket this Order in *all* member cases and to terminate 16-CV-740, ECF No. 410 (which erroneously remains open).

SO ORDERED.

Dated: September 16, 2020
New York, New York



 JESSE M. FURMAN
 United States District Judge